

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION**

UNITED STATES OF AMERICA and	)	
THE STATE OF WISCONSIN,	)	
Plaintiffs,	)	
	)	Civil Action No. 10-C-910
v.	)	
	)	
NCR CORPORATION,	)	
APPLETON PAPERS INC.,	)	
BROWN COUNTY,	)	
CITY OF APPLETON,	)	
CITY OF GREEN BAY,	)	
CBC COATING, INC.,	)	
GEORGIA-PACIFIC CONSUMER PRODUCTS LP,	)	
KIMBERLY-CLARK CORPORATION,	)	
MENASHA CORP.,	)	
NEENAH-MENASHA SEWERAGE COMMISSION,	)	
NEWPAGE WISCONSIN SYSTEMS, INC.,	)	
P.H. GLATFELTER CO.,	)	
U.S. PAPER MILLS CORP., and	)	
WTM I COMPANY,	)	
Defendants.	)	

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**DEFENDANT NCR CORPORATION’S RESPONSE TO PLAINTIFFS’  
STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF THEIR MOTION  
FOR PARTIAL SUMMARY JUDGMENT THAT DEFENDANTS  
ARE LIABLE PARTIES UNDER CERCLA SECTION 107(a)**

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Pursuant to Civil L.R. 56(b)(2)(B)(i), Defendant NCR Corporation (“NCR”) respectfully submits the following Response to Plaintiffs’ Statement of Undisputed Facts in Support of Their Motion for Partial Summary Judgment That Defendants Are Liable Parties Under CERCLA Section 107(a), Dkt. #550 (“SUF”).

## **General Facts**

**SUF 1:** The Lower Fox River and Green Bay Site is a “facility” within the meaning of 42 U.S.C. § 9601(21). Declaration of Jeffrey A. Spector (“Spector Decl.”), Ex. 1 (CBC Answer) at ¶ 43; Ex. 2 (CBC RFA) at 8; Ex. 3 (Glatfelter Answer) at ¶ 43; Ex. 4 (Menasha RFA) at 11; Ex. 5 (NCR Answer) at ¶ 43; Ex. 6 (NCR RFA) at 10; Ex. 7 (WTM RFA) at 5; Ex. 8 (WTM Answer) at ¶ 43.

**RESPONSE:** Undisputed.

**SUF 2:** The Site is contaminated with PCBs. Spector Decl., Ex. 1 at ¶ 4; Ex. 2 at 10; Ex. 4 at 16; Ex. 6 at 14; Ex. 7 at 7; Ex. 8 at ¶ 4; Ex. 9 (Glatfelter RFA) at 12; Ex. 10 (Menasha Answer) at ¶ 4; Ex. 11 (NCR Amended Answer) at ¶ 4.

**RESPONSE:** Undisputed.

**SUF 3:** PCBs are a “hazardous substance” within the meaning of CERCLA §§ 101(14) and 107(a), 42 U.S.C. §§ 9601(14) and 9607(a). Spector Decl., Ex. 1 at ¶ 44; Ex. 2 at 8; Ex. 3 at ¶ 44; Ex. 4 at 11; Ex. 6 at 10; Ex. 8 at ¶ 44; Ex. 9 at 9; Ex. 10 at ¶ 44; Ex. 11 at ¶ 44.

**RESPONSE:** Undisputed.

**SUF 4:** The United States and the State of Wisconsin incurred response costs at the Site. Spector Decl., Ex. 1 at ¶ 14; Ex. 6 at 11; Ex. 7 at 5-6; Ex. 8 at ¶ 14; Ex. 9 at 10; Ex. 10 at ¶ 14; Ex. 11 at ¶ 14.

**RESPONSE:** Undisputed.

**SUF 5:** The United States and the State of Wisconsin incurred response costs relating to each Defendant, including costs spent investigating PCB releases by each Defendant. Spector Decl., Ex. 19 (Tech Memo 2d, excerpts at Appendix B, Appendix C); Ex. 21 (Administrative Order for Remedial Action, Appendix 1).

**RESPONSE:** Undisputed.

## **CBC Coatings Inc.**

**SUF 6:** CBC (formerly known as Riverside Paper Corporation) is a corporation that owned and operated a paper production facility at 800 South Lawe Street in Appleton, Wisconsin (the “Riverside Facility”) from at least 1954 until 2005. Spector Decl., Ex. 2 at 4.

**RESPONSE:** Undisputed.

**SUF 7:** CBC owned and operated the Riverside Facility when the United States filed the Complaint. Spector Decl., Ex. 2 at 9.

**RESPONSE:** Undisputed.

**SUF 8:** CBC is a “person” as defined by 42 U.S.C. § 9601(21). Spector Decl., Ex. 2 at 4.

**RESPONSE:** Undisputed.

**SUF 9:** CBC processed waste paper and other secondary fiber, some of which contained PCB-containing carbonless copy paper, at the Riverside Facility. Spector Decl., Ex. 2 at 4; Ex. 12 (Burzynski Dep., Aug. 17, 2009) at 38:4- 43:21, 54:3-61:17; Ex. 13 (R. J. Farley and H. Bressers Letter).

**RESPONSE:** Undisputed.

**SUF 10:** Between 1954 and 1980, the Riverside Facility discharged wastewater, some of which contained PCBs, through an outfall to the Lower Fox River. Spector Decl., Ex. 2 at 5-7; Ex. 14 (Holzknecht Dep., April 16, 2009) at 67:8-71:4, 74:11-75:6, 77:21-79:19; Ex. 15 (Farnum Dep., March 27, 2009) at 70:4-73:8; Ex. 16 (Kerwin Paper Application); Ex. 17 (Riverside Paper Identification Form) at CBCFOX00003496; Ex. 18 (PCB Data Synopsis); Ex. 19 at CBCFOX00003888; Ex. 20 (Kerwin Paper Co. Lab. Analysis).

**RESPONSE:** Undisputed.

**SUF 11:** The Riverside Facility is a “facility” within the meaning of 42 U.S.C. §§ 9601(9) and 9607(a). Spector Decl., Ex. 1 at ¶ 43; Ex. 2 at 8.

**RESPONSE:** Undisputed.

**SUF 12:** Between 1973 and 1980, the Riverside Facility discharged a portion of its process wastewater, some of which contained PCBs, to the City of Appleton POTW for disposal or treatment. Spector Decl., Ex. 2 at 10; Ex. 19 at CBCFOX00003888; Ex. 17 at CBCFOX00003493; Ex. 22 (Riverside Paper Co., Report of Effluent Analysis) at CBCFOX00003499; Ex. 23 (Riverside Paper Corp. Lab. Analysis); Ex. 24 (D. Buser, Expert Report) at 3-4.

**RESPONSE:** Undisputed.

**SUF 13:** The City of Appleton POTW discharged wastewater containing PCBs to the Lower Fox River. Spector Decl., Ex. 2 at 7; Ex. 25 (WSLOH Reports) at WDNR109000843, WDNR109000846, WDNR109000866; Ex. 28 (PCBs in Major WI Industrial and Municipal WWTP Facilities).

**RESPONSE:** Undisputed.

**SUF 14:** The City of Appleton POTW is a “facility” within the meaning of 42 U.S.C. §§ 9601(9) and 9607(a). Spector Decl., Ex. 1 at ¶ 43; Ex. 2 at 8.

**RESPONSE:** Undisputed.

### **P.H. Glatfelter Company**

**SUF 15:** The Bergstrom Paper Company was a Wisconsin corporation that owned and operated the Bergstrom Mill, a paper recycling mill located at 225 West Wisconsin Avenue in Neenah, Wisconsin from at least 1954 to 1979. Spector Decl., Ex. 9 at 4; Ex. 3 at ¶ 90.

**RESPONSE:** Undisputed.

**SUF 16:** In 1979, the Bergstrom Paper Company merged into the P.H. Glatfelter Company and Glatfelter thereafter owned and operated the Bergstrom Mill until it was closed and sold. Spector Decl., Ex. 9 at 5.

**RESPONSE:** Undisputed.

**SUF 17:** Following Glatfelter’s merger with the Bergstrom Paper Company in 1979, Glatfelter was the surviving corporation. Spector Decl., Ex. 9 at 5.

**RESPONSE:** Undisputed.

**SUF 18:** The Bergstrom Paper Company operated the Arrowhead Park Landfill, located adjacent to the Bergstrom Mill, from at least 1954 to 1976. Spector Decl., Ex. 9 at 4.

**RESPONSE:** Undisputed.

**SUF 19:** The Bergstrom Paper Company was a “person” within the meaning of CERCLA Sections 101(21) and 107(a), 42 U.S.C. §§ 9601(21) and 9607(a). Spector Decl., Ex. 9 at 5.

**RESPONSE:** Undisputed.

**SUF 20:** Glatfelter is a “person” within the meaning of CERCLA Sections 101(21) and 107(a), 42 U.S.C. §§ 9601(21) and 9607(a). Spector Decl., Ex. 3 at ¶ 39; Ex. 9 at 5.

**RESPONSE:** Undisputed.

**SUF 21:** At times between at least 1954 and 1980, the Bergstrom Mill processed waste paper, some of which contained PCBs, including post-consumer, PCB-containing, carbonless copy paper. Spector Decl., Ex. 3 at ¶ 91; Ex. 9 at 6.

**RESPONSE:** Undisputed.

**SUF 22:** At times between at least 1954 to 1980, the Bergstrom Mill discharged treated wastewater containing some PCBs into the Little Lake Butte des Morts portion of the Lower Fox River. Spector Decl., Ex. 3 at ¶ 92; Ex. 9 at 6; Ex. 29 (IPC Report to Bergstrom Paper Co., Oct. 17, 1973); Ex. 30 (IPC Report to Bergstrom Paper Co., Feb. 3, 1975); Ex. 31 (Memo re: Chlorinated Organics - PCBs); Ex. 32 (IPC PCB Results Report, April 15, 1977); Ex. 33 (WDNR Letter to Leon Acierto); Ex. 28 at NCR-FOX-0104798-800; Ex. 35 (Memo to WPC Directors) at NCR-FOX-0279940-41, 55; Ex. 36 (1973 PCB Discharges by Facility); Ex. 47 (PCBs in the US Industrial Use and Env. Dist.).

**RESPONSE:** Undisputed.

**SUF 23:** There have been “releases” of PCBs from the Bergstrom Mill to the Little Lake Butte des Morts portion of the Lower Fox River within the meaning of CERCLA Sections 101(22) and 107(a), 42 U.S.C. §§ 9601(22) and 9607(a). Spector Decl., Ex. 9 at 7.

**RESPONSE:** Undisputed.

**SUF 24:** Glatfelter’s discharge of PCB-containing wastewater from the Bergstrom Mill to OU-1 of the Lower Fox River was a “disposal” in OU-1 of a hazardous substance within the meaning of CERCLA Sections 101(14), 101(29), and 107(a), 42 U.S.C. §§ 9601(14), 9601(29), and 9607(a).” Spector Decl., Ex. 9 at 8.

**RESPONSE:** Undisputed.

**SUF 25:** PCBs in the wastewater discharged from the Bergstrom Mill were deposited or otherwise came to be located in sediment in OU-1 of the Site. Spector Decl., Ex. 9 at 8.

**RESPONSE:** Undisputed.

**SUF 26:** Some amount of PCBs released into OU-1 were subsequently deposited in OU-2, OU-3, OU-4, and OU-5. Spector Decl., Ex. 37 (Glatfelter 2nd Interrogatory Response) at 9, Ex. 38 (V. Magar Expert Report) at 11.

**RESPONSE:** Undisputed.

**SUF 27:** The Bergstrom Mill was a “facility” within the meaning of CERCLA §§ 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a). Spector Decl., Ex. 3 at ¶ 40; Ex. 9 at 10.

**RESPONSE:** Undisputed.

**SUF 28:** The wastewater treatment plant at the Bergstrom Mill generated paper mill sludge that at times contained PCBs. Spector Decl., Ex. 9 at 7.

**RESPONSE:** Undisputed.

**SUF 29:** Between at least 1954 and 1976, the Bergstrom Paper Company placed PCB- containing sludge from the Bergstrom Mill’s wastewater treatment plant into the adjacent Arrowhead Park Landfill. Spector Decl., Ex. 3 at ¶ 93; Ex. 9 at 7.

**RESPONSE:** Undisputed.

**SUF 30:** At least some portion of the PCB-containing sludge from the Bergstrom Mill that was placed in the Arrowhead Park Landfill by the Bergstrom Paper company eroded, leaked, or discharged from the Arrowhead Park Landfill into the Little Lake Butte des Morts portion of the Lower Fox River. Spector Decl., Ex. 39 (Shimek Expert Report) at NCR-FOX-0622730; Dkt. 352-3 at 7 (“there were not likely *significant* losses of sludges containing PCBs via erosion from the landfill to the Fox River”) (emphasis added); Spector Decl., Ex. 45 at EPA052170-79.

**RESPONSE:** Undisputed.

**SUF 31:** The Bergstrom Paper Company’s placing of PCB-containing sludge from the Bergstrom Mill into the Arrowhead Park Landfill was a “disposal” of a hazardous substance within the meaning of CERCLA Sections 101(14), 101(29), and 107(a), 42 U.S.C. §§ 9601(14), 9601(29), and 9607(a). Spector Decl., Ex. 9 at 9.

**RESPONSE:** Undisputed.

**SUF 32:** The Arrowhead Park Landfill is a “facility” within the meaning of CERCLA §§ 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a). Spector Decl., Ex. 3 at ¶ 42; Ex. 9 at 10.

**RESPONSE:** Undisputed.

### **Menasha Corporation**

**SUF 33:** The John Strange Paper Company was a corporation that owned and operated the John Strange Paper Mill (“John Strange Mill”), a paperboard mill located at 69 Washington Street in Menasha, Wisconsin from at least 1954 to 1971. Spector Decl., Ex. 4 at 4-5; Ex. 10 at ¶ 80.

**RESPONSE:** Undisputed.

**SUF 34:** In 1971, the John Strange Paper Company merged into the Menasha Corporation (“Menasha”) and Menasha thereafter owned and operated the John Strange Mill until 1983, when it was sold to U.S. Paper Mills Corp. Spector Decl., Ex. 4 at 5; Ex. 10 at ¶ 80.

**RESPONSE:** Undisputed.

**SUF 35:** Menasha is the successor by merger to the John Strange Paper Company. Spector Decl., Ex. 4 at 5; Ex. 10 at ¶ 80.

**RESPONSE:** Undisputed.

**SUF 36:** The John Strange Paper Company was a “person” within the meaning of CERCLA Sections 101(21) and 107(a), 42 U.S.C. §§ 9601(21) and 9607(a). Spector Decl., Ex. 4 at 5.

**RESPONSE:** Undisputed.

**SUF 37:** Menasha is a “person” within the meaning of CERCLA Sections 101(21) and 107(a), 42 U.S.C. §§ 9601(21) and 9607(a). Spector Decl., Ex. 4 at 5.

**RESPONSE:** Undisputed.

**SUF 38:** Menasha and its predecessor, the John Strange Paper Company, recycled paper at the John Strange Mill to make paperboard products, using as part of its furnish mixed paper which included PCB-containing carbonless copy paper. Spector Decl., Ex. 10 at ¶ 81; Ex. 41 (Morris Dep.) at 26:1-6, 20-23; Ex. 42 (IPC PCB Results Report, Dec. 13, 1971); Ex. 43 (John Strange Lab Analysis, May 19, 1976); Ex. 44 (John Strange Lab Analysis, Feb. 20, 1976); Ex. 53 (John Strange Lab Analysis, Mar. 27, 1972); Ex. 54 (John Strange Lab Analysis, April 4, 1972); Ex. 45 (Evaluation of PCB Loading from JSPM to LFR) at EPA052114.

**RESPONSE:** Undisputed.

**SUF 39:** While owned and operated by Menasha or its predecessor, the John Strange Paper Company, the John Strange Mill discharged white water, some of which contained PCBs, to the Menasha Channel of the Lower Fox River. Spector Decl., Ex. 10 at ¶ 83; Ex. 19 at CBCFOX00003887-88; Ex. 33; Ex. 35 at NCR-FOX-0279940-41, 55; Ex. 36 (NCR-FOX-0328207-24); Ex. 47 (EPAAR060007-9); Ex. 55 (Menasha Letter re PCB Flare-Up).

**RESPONSE:** Undisputed.

**SUF 40:** There have been “releases” of PCBs at and from the John Strange Mill within the meaning of CERCLA Sections 101(22) and 107(a), 42 U.S.C. §§ 9601(22) and 9607(a). Spector Decl., Ex. 10 at ¶ 83; Ex. 19 at CBCFOX00003887-88; Ex. 28; Ex. 35 at NCR-FOX-0279940-41, 55; Ex. 47.

**RESPONSE:** Undisputed.

**SUF 41:** Menasha’s discharge of PCBs in white water from the John Strange Mill to the Menasha Channel of the Lower Fox River constituted a “disposal” of a hazardous substance within the meaning of CERCLA Sections 101(14), 101(29), and 107(a), 42 U.S.C. §§ 9601(14), 9601(29), and 9607(a). Spector Decl., Ex. 4 at 9.

**RESPONSE:** Undisputed.

**SUF 42:** The John Strange Mill is a “facility” within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a). Spector Decl., Ex. 4 at 11.

**RESPONSE:** Undisputed.

**SUF 43:** Menasha or its predecessor, the John Strange Paper Company, discharged wastewater from the John Strange Mill to the Neenah-Menasha POTW for treatment. Spector Decl., Ex. 4 at 9-10; Ex. 48 (WDNR letter to W. Allan Schenck); Ex. 49 (Sugden Dep.) at 70:8-12; Ex. 56 (Versar Inc. Letter re PCB Model Generation) at MENFOX00001944.

**RESPONSE:** Undisputed.

**SUF 44:** The Neenah-Menasha POTW received wastewater from many sources, including Menasha, and discharged that wastewater into OU-1 at the Site. Spector Decl., Ex. 4 at 9-10.

**RESPONSE:** Undisputed.

**SUF 45:** Menasha or its predecessor, the John Strange Paper Company, arranged with the Neenah-Menasha POTW for the treatment or disposal of wastewater from the John Strange Mill containing PCBs. Spector Decl., Ex. 4 at 9-10; Ex. 10 at ¶ 83.

**RESPONSE:** Undisputed.

**SUF 46:** Some amount of PCBs released into OU-1 were subsequently deposited in OU-2, OU-3, OU-4, and OU-5. Spector Decl., Ex. 38 at 11.

**RESPONSE:** Undisputed.

**SUF 47:** The Neenah-Menasha POTW is a “facility” within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a). Spector Decl., Ex. 4 at 11.

**RESPONSE:** Undisputed.

**SUF 48:** Menasha admits that it “is liable to the Plaintiffs under CERCLA section 107(a)(2) and CERCLA section 107(a)(3).” Spector Decl., Ex. 10 at ¶ 84.

**RESPONSE:** Undisputed.

### **NCR Corporation**

**SUF 49:** NCR and its corporate predecessors owned and operated a paper coating facility located at 825 East Wisconsin in Appleton, Wisconsin (“Appleton Facility”) between 1954 and June 30, 1978. Spector Decl., Ex. 6 at 5; Ex. 11 at ¶ 46.

**RESPONSE:** Undisputed, except as follows. Corporate predecessors of NCR owned and operated a paper coating facility located at 825 East Wisconsin in Appleton, Wisconsin (“Appleton Facility”) between 1954 and 1973. *See* SUFs 52, 53, 58 and 59. NCR owned and operated the Appleton Facility between 1973 and June 30, 1978. *See* SUFs 61 and 62.

**SUF 50:** NCR and its corporate predecessors owned and operated a papermaking and coating facility located at 540 Prospect Street in Combined Locks, Wisconsin (“Combined Locks Facility”) between 1954 and June 30, 1978. Spector Decl., Ex. 6 at 5; Ex. 11 at ¶ 46.

**RESPONSE:** Undisputed, except as follows. Corporate predecessors of NCR owned and operated a papermaking and coating facility located at 540 Prospect Street in Combined Locks, Wisconsin (“Combined Locks Facility”) between 1954 and 1973. *See* SUFs 55, 56, 58 and 59. NCR owned and operated the Combined Locks Facility between 1971 and June 30, 1978. *See* SUFs 61 and 62.

**SUF 51:** NCR is a “person” within the meaning of CERCLA Sections 101(21) and 107(a), 42 U.S.C. §§ 9601(21) and 9607(a). Spector Decl., Ex. 6 at 5; Ex. 11 at ¶ 39.

**RESPONSE:** Undisputed.

**SUF 52:** Appleton Coated Paper Company (“ACPC”) was a corporation that owned and operated the Appleton Facility from at least 1954 to 1970. Spector Decl., Ex. 6 at 5.

**RESPONSE:** Undisputed.

**SUF 53:** In 1970, NCR acquired ACPC. Spector Decl., Ex. 6 at 5.

**RESPONSE:** Undisputed.

**SUF 54:** ACPC was a “person” within the meaning of CERCLA Sections 101(21) and 107(a), 42 U.S.C. §§ 9601(21) and 9607(a). Spector Decl., Ex. 6 at 5.

**RESPONSE:** Undisputed.

**SUF 55:** Combined Paper Mills, Inc. (“Combined Paper”) was a corporation that owned and operated the Combined Locks Facility from at least 1954 to 1969. Spector Decl., Ex. 6 at 6.

**RESPONSE:** Undisputed.

**SUF 56:** In 1969, NCR acquired Combined Paper and Combined Paper became a wholly owned subsidiary of NCR. Spector Decl., Ex. 5 at ¶ 46; Ex. 6 at 6.

**RESPONSE:** Undisputed.

**SUF 57:** Combined Paper was a “person” within the meaning of CERCLA Sections 101(21) and 107(a), 42 U.S.C. §§ 9601(21) and 9607(a). Spector Decl., Ex. 6 at 6.

**RESPONSE:** Undisputed.

**SUF 58:** In 1971, NCR merged ACPC and Combined Paper into a single entity named Appleton Papers, Inc. (“Appleton Papers”). Spector Decl., Ex. 6 at 6; Ex. 11 at ¶ 45.

**RESPONSE:** Undisputed.

**SUF 59:** After the 1971 merger, Appleton Papers owned and operated the Appleton Facility and the Combined Locks Facility. Spector Decl., Ex. 6 at 6; Ex. 11 at ¶ 45.

**RESPONSE:** Undisputed.

**SUF 60:** Appleton Papers was a “person” within the meaning of CERCLA Sections 101(21) and 107(a), 42 U.S.C. §§ 9601(21) and 9607(a). Spector Decl., Ex. 6 at 6.

**RESPONSE:** Undisputed.

**SUF 61:** In 1973, Appleton Papers merged into NCR and became an operating division known as the NCR Appleton Papers Division. Spector Decl., Ex. 6 at 6; Ex. 11 at ¶ 45.

**RESPONSE:** Undisputed.

**SUF 62:** NCR Appleton Papers Division owned and operated the Appleton Facility and the Combined Locks Facility until 1978. Spector Decl., Ex. 5 at ¶ 46; Ex. 6 at 6.

**RESPONSE:** Undisputed.

**SUF 63:** Between 1954 and April 1971, the Appleton Facility produced CCP using an emulsion containing PCBs. Spector Decl., Ex. 6 at 6; Ex. 11 at ¶ 47; Ex. 50 (Analyses of Wastewater Received by FH in ‘75 & ‘76).

**RESPONSE:** Undisputed.

**SUF 64:** Between 1954 and April 1971, while the Appleton Facility was owned and operated by NCR and its predecessor ACPC, the Appleton Facility discharged wastewater containing PCBs to the City of Appleton POTW. Spector Decl., Ex. 6 at 7; Ex. 11 at ¶ 51.

**RESPONSE:** Undisputed, except as follows. The Appleton Facility discharged wastewater containing PCBs to the City of Appleton POTW at times between 1954 and April 1971. During that time period, the Appleton Facility was owned and operated by a corporate predecessor of NCR. *See* SUFs 52, 53, 58 and 59.

**SUF 65:** The City of Appleton POTW discharged wastewater containing PCBs to the Lower Fox River. Spector Decl., Ex. 6 at 7; Ex. 11 at ¶ 51.

**RESPONSE:** Undisputed.

**SUF 66:** There have been “releases of PCBs” at and from the City of Appleton POTW within the meaning of CERCLA Sections 101(22) and 107(a), 42 U.S.C. §§ 9601(22) and 9607(a). Spector Decl., Ex. 6 at 7.

**RESPONSE:** Undisputed.

**SUF 67:** Between 1954 and April 1971, PCBs from the City of Appleton POTW were deposited, discharged to, or otherwise came to be located at the Site. Spector Decl., Ex. 6 at 7-8.

**RESPONSE:** Undisputed.

**SUF 68:** The Appleton Facility is a “facility” within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a). Spector Decl., Ex. 6 at 10; Ex. 11 at ¶ 40.

**RESPONSE:** Undisputed.

**SUF 69:** The City of Appleton POTW is a “facility” within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a). Spector Decl., Ex. 6 at 10.

**RESPONSE:** Undisputed.

**SUF 70:** Between 1969 and April 1971, the Combined Locks Facility produced CCP using an emulsion containing PCBs. Spector Decl., Ex. 6 at 8; Ex. 11 at ¶ 50; Ex. 50.

**RESPONSE:** Undisputed, except as follows. The Combined Locks Facility intermittently produced CCP using an emulsion containing PCBs at times between 1969 and April 1971. *See* Dkt. #552-1 at 173.

**SUF 71:** Between at least 1969 and April 1971, the Combined Locks Facility, while owned and operated by NCR and its predecessor Combined Paper, discharged wastewater containing PCBs into a clarifier, which then discharged to the Lower Fox River. Spector Decl., Ex. 6 at 8-9; Ex. 11 at ¶ 50.

**RESPONSE:** Undisputed, except as follows. The Combined Locks Facility discharged wastewater containing PCBs into a clarifier, which then discharged to the Lower Fox River, at times between at least 1969 and April 1971. *See* Dkt. #552-1 at 173. During that time period, the Combined Locks Facility was owned and operated by a corporate predecessor of NCR. *See* SUFs 55, 56, 58 and 59.

**SUF 72:** Between at least 1969 and April 1971, PCBs from the Combined Locks Facility were deposited, discharged to, or otherwise came to be located in sediment at the Site. Spector Decl., Ex. 6 at 9.

**RESPONSE:** Undisputed, except as follows. At times between at least 1969 and April 1971, PCBs from the Combined Locks Facility were deposited, discharged to, or otherwise came to be located in sediment at the Site. *See* Dkt. #552-1 at 173.

**SUF 73:** Some amount of PCBs released into OU-2 were subsequently deposited in OU-3, OU-4, and OU-5. Spector Decl., Ex. 51 (Simon Expert Report).

**RESPONSE:** Undisputed.

**SUF 74:** The Combined Locks Facility is a “facility” within the meaning of CERCA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a). Spector Decl., Ex. 6 at 10; Ex. 11 at ¶ 40.

**RESPONSE:** Undisputed.

**SUF 75:** Aroclor 1242 is a “hazardous substance” within the meaning of CERCLA Sections 101(14) and 107(a), 42 U.S.C. §§ 9601(14) and 9607(a). Spector Decl., Ex. 6 at 10.

**RESPONSE:** Undisputed.

**WTM I Company**

**SUF 76:** WTM I Company (“WTM”) (formerly known as Wisconsin Tissue Mills Inc. and WTM Corp.) and at least one of its corporate predecessors – including another company called Wisconsin Tissue Mills Inc – have owned and/or operated a paper production facility on Tayco Street in Menasha, Wisconsin (“WTM Facility”). Spector Decl., Ex. 7 at 1-2; Ex. 8 at ¶ 104.

**RESPONSE:** Undisputed.

**SUF 77:** WTM is a corporate successor by merger to a Wisconsin corporation called Wisconsin Tissue Mills Inc., which owned and operated the WTM Facility until at least 1977. Spector Decl., Ex. 7 at 2; Ex. 8 at ¶ 104.

**RESPONSE:** Undisputed.

**SUF 78:** Wisconsin Tissue Mills Inc. was a “person” within the meaning of CERCLA Sections 101(21) and 107(a), 42 U.S.C. §§ 9601(21) and 9607(a). Spector Decl., Ex. 7 at 2.

**RESPONSE:** Undisputed.

**SUF 79:** WTM is a “person” within the meaning of CERCLA Sections 101(21) and 107(a), 42 U.S.C. §§ 9601(21) and 9607(a). Spector Decl., Ex. 7 at 2; Ex. 8 at ¶ 39.

**RESPONSE:** Undisputed.

**SUF 80:** Between at least 1954 and 1977, while the WTM Facility was owned and operated by WTM and its predecessors, the WTM Facility processed waste paper, some of which contained PCBs. Spector Decl., Ex. 7 at 2; Ex. 8 at ¶ 105; Ex. 52 (WTM Response to Information Request) at NCR-FOX-479017.

**RESPONSE:** Undisputed.

**SUF 81:** During WTM's ownership and operation of the WTM Facility, in connection with its recycling of waste paper, some PCBs were released into Little Lake Butte des Morts, the southernmost portion of the Lower Fox River designated as OU-1, either directly from the WTM Facility or through the Neenah-Menasha POTW. Spector Decl., Ex. 8 at ¶ 106; Ex. 19 at CBCFOX00003886; Ex. 26 (WTM letter re Effluent PCB Data Since 1973); Ex. 27 (WTM letter re PCB Levels); Ex. 33 at NCR-FOX-0033047; Ex. 34 (Discharges with Net Increases in PCB to LFR Basin) at NCR-FOX-0025174; Ex. 40 (PCB Data to Date – 1976); Ex. 46 (DNR's NR 101 Report 1983 Print-Out) at NCR-FOX-0096695-96.

**RESPONSE:** Undisputed.

**SUF 82:** From at least 1954 until May 12, 1976, WTM discharged its process wastewater from the WTM Facility to the Neenah-Menasha POTW, which in turn discharged to the Lower Fox River. Spector Decl., Ex. 52 at NCR-FOX-479030.

**RESPONSE:** Undisputed.

**SUF 83:** Some of WTM's process wastewater was also discharged directly to the Site through a sewer bypass line prior to September 1972. Spector Decl., Ex. 52 at NCR-FOX-479030; Ex. 57 (M. Jury Expert Report) at 1, 3-4; Ex. 58 (WTM Letter, Oct. 4, 1972); Ex. 59 (Statement for Presentation at DNR Hearing).

**RESPONSE:** Undisputed.

**SUF 84:** Beginning on May 12, 1976, WTM began discharging effluent from the WTM Facility directly to the Lower Fox River through an outfall at the facility. Spector Decl., Ex. 52 at NCR-FOX-479030.

**RESPONSE:** Undisputed.

**SUF 85:** There have been "releases" of PCBs at and from the WTM Facility within the meaning of CERCLA Sections 101(22) and 107(a), 42 U.S.C. §§ 9601(22) and 9607(a). Spector Decl., Ex. 7 at 3; Ex. 8 at ¶ 107.

**RESPONSE:** Undisputed.

**SUF 86:** WTM's and its corporate predecessors' discharges of PCB-containing wastewater from the WTM Facility were "disposals" of a hazardous substance within the meaning of CERCLA Sections 101(14), 101(29), and 107(a), 42 U.S.C. §§ 9601(14), 9601(29), 9607(a). Spector Decl., Ex. 7 at 4.

**RESPONSE:** Undisputed.

**SUF 87:** PCBs in wastewater discharged from the WTM Facility were deposited or otherwise came to be located in sediment in OU-1 at the Site. Spector Decl., Ex. 7 at 3.

**RESPONSE:** Undisputed.

**SUF 88:** Between at least 1954 and 1976, while the WTM Facility was owned and operated by WTM and its predecessors, the WTM Facility discharged its wastewater, which at times contained PCBs, to the Neenah-Menasha POTW for treatment and disposal. Spector Decl., Ex. 7 at 3.

**RESPONSE:** Undisputed.

**SUF 89:** The Neenah-Menasha POTW discharged wastewater which at times contained PCBs from the WTM Facility to the Little Lake Butte des Morts portion of the Lower Fox River. Spector Decl., Ex. 7 at 3.

**RESPONSE:** Undisputed.

**SUF 90:** Some amount of PCBs released into OU-1 were subsequently deposited in OU-2, OU-3, OU-4, and OU-5. Spector Decl., Ex. 38 at 11.

**RESPONSE:** Undisputed.

**SUF 91:** There have been “releases” of PCBs at and from the Neenah-Menasha POTW within the meaning of CERCLA Sections 101(22) and 107(a), 42 U.S.C. §§ 9601(22) and 9607(a). Spector Decl., Ex. 7 at 4.

**RESPONSE:** Undisputed.

**SUF 92:** The WTM Facility is a “facility” within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a). Spector Decl., Ex. 7 at 5; Ex. 8 at ¶ 40.

**RESPONSE:** Undisputed.

**SUF 93:** The Neenah-Menasha POTW is a “facility” within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a). Spector Decl., Ex. 7 at 5; Ex. 8 at ¶ 41.

**RESPONSE:** Undisputed.

**SUF 94:** WTM and its corporate predecessors, by contract, agreement, or otherwise, arranged for disposal or treatment of its wastewater, which at times contained PCBs, that it owned or possessed at a facility owned or operated by another party or entity, and there were releases of wastewater containing PCBs from that facility to OU1 of the Site. Spector Decl., Ex. 7 at 7.

**RESPONSE:** Undisputed.

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Respectfully submitted,

NCR CORPORATION

/s/ Evan B. Westerfield

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